**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU**

**THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929**

**CRL.A.No. 749 of 1999(C)**
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**CRA.117/1999 of SESSIONS COURT, THRISSUR**
**C.C. NO.205.1998 OF JUDL.MAGISTRATE OF THE 1ST CLASS CHAVAKKAD.**

**.....**

**APPELLANT: RESPONDENT NO.1/ COMPLAINANT**
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**PRAJITH, S/O.KOKKANTHRA RAGHAVAN,**
**CHAZHOOR VILLAGE, DESOM, THRISSUR**
**TALUK, POWER OF ATTORNEY HOLDER OF MAYOORAM FINANCE CORPORATION, THALIKKULAM BRANCH.**

**BY ADV. SRI.VINOD MADHAVAN**

**RESPONDENTS: APPELLANT. ACCUSED**
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1. **MADHU.M., SUKUMAR, S/O.SUKUMAR,**
   **MANOTHUPARMBIL HOUSE,**
   **VALLOOR DESOM, ANTHIKKAD VILLAGE,**
   **THRISSUR.**

2. **STATE OF KERALA, REP.BY THE**
   **PUBLIC PROSECUTOR, HIGH COURT OF KERALA,**
   **ERNAKULAM.**

**BY PUBLIC PROSECUTOR SRI.C.K.SURESH**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**K.R.UDAYABHANU, J**

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Crl.A.No.749 of 1999

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Dated this the 26th day of July, 2007

**JUDGMENT**

The revision petitioner is the complainant who had initiated proceedings against the respondent/accused with respect to the offence under Section 138 of the Negotiable Instruments Act alleging that the accused borrowed a sum of Rs.2,50,000/- and towards discharge of the above liability the impugned cheque was issued which when presented for encashment got dishonoured for want of funds in the account of the accused.

2. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 3 and Exts. P1 to P10. The defence examined DWs' 1 and 2 and Exts. D1 to D7.

3. The defence contention is that only a sum of Rs.1,70,003/- was borrowed and towards security a blank cheque was issued which has been misused incorporating the amount of Rs.2,80,000/- and presented. It is also contented that a sum of Rs.26,250/- has already been paid by crossed cheques. The

accused had other chit transactions also with the complainant company and has also produced the pass book with respect to the same vide Exts. D2 to D5. The contentions raised by the defence is mentioned in Ext. D6 reply notice. The appellate court found that the contentions of the respondents stands established from the documents produced. i.e., the loan amount was availed by a crossed account payee cheque for a sum of Rs.1,70,003/- and cheques have been issued in favour of the complainant for a sum of Rs.16,250/- and Rs.10,000/- which established that the same has been encashed by the complainant company. The contention of the complainant that an amount of Rs.1,70,003/- was paid by way of cheque and the balance amount by cash was found not established in the absence of objective evidence in this regard which the complainant company would be having. It was in the above circumstances that the appellate court found that the case set up at the instance of the defence appeared probable. In the absence of production of the concerned records with respect to the transaction the appellate court found that the prosecution allegations stood not established beyond reasonable doubt.

4. I find that the appellate court has meticulously considered the evidence adduced in the matter. I find no reason to interfere in the finding of acquittal by the court below in exercise of the appellate jurisdiction.

The criminal appeal is dismissed.

**K.R.UDAYABHANU,**
**JUDGE**

csl